

Section VII Enforcement

This ordinance shall be enforced in accordance with the provisions of Article VI of the Zoning Ordinance, and violators shall be subject to the penalty provisions contained therein.

Section VIII Remedies

In the case of any violation of this ordinance, or regulations adopted hereunder, the Commission, in addition to other remedies may institute any appropriate action or proceedings to prevent, restrain, correct or abate such violation.

Section IX Appeal

Any person aggrieved by a decision of the Historic District Commission shall have the right to appeal concerning such decision to the Zoning Board of Adjustment. Upon appeal, the Zoning Board of Adjustment shall review the decision of the Historic District Commission to determine whether the decision conforms to the provisions under this ordinance and the rules of procedure and regulations adopted thereunder. 3-13-01

Section X Validity

If any section, subsection, phrase, sentence or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

Section XI Effective Date

This ordinance shall take effect upon adoption. 3-11-86

Section 4-16 _____

Section 4-17 _____

ARTICLE V

SPECIAL EXCEPTIONS

Section 5-1 General

Special exceptions as herein provided for shall be deemed to be permitted uses in their respective zones, subject to the satisfaction of the requirements and standards set forth herein, in addition to all other requirements and standards of this Ordinance. All such cases are hereby declared to possess characteristics of such unique and special form that each specific use shall be considered as an individual case. 3-12-63

Section 5-2 Standards Applicable to All Special Exceptions

A. Conditions for Special Exceptions

Before the Board of Adjustment considers the approval of an application for a special exception, the applicant shall prove to the satisfaction of the Board of Adjustment that all the following conditions have been met:

1. That the property in question is in conformance with the dimensional requirements of the zone; and that the minimum lot area shall contain no wetland as defined in Art. IV, Sec. 4-11; no flood plain as defined in Art. IV, Sec. 4-10; and no slopes greater than 20%; and that the use is compatible with the Amherst Master Plan. (3.13.07)

2. That there is safe vehicular and pedestrian access to and from the site.

3. That there will be no significant adverse impacts resulting from the proposed use upon the public health, safety and general welfare of the neighborhood and of the Town of Amherst.

4. That the proposed use will not be more objectionable to nearby properties by reason of noise, fumes, vibration, or inappropriate lighting than the existing use of the property.

5. That the applicant describe in writing and on a scaled drawing, the location and size of the use, the nature and intensity of operations involved, the tract size, parking areas and other physical land features of the site in question.

6. That the proposed use will not adversely affect the ground water resources of Amherst, in particular the Aquifer Conservation District as defined in Section 4-13 of the Amherst Zoning Ordinance.

Response to each of the above conditions shall be provided in writing on forms available in the Amherst Zoning/Planning Office.

The Board of Adjustment may seek additional recommendations of the Amherst Planning Board. The applicant shall file a Non-Residential Site Plan Review application

in accordance with Section "C" of the Amherst Zoning Ordinance with the Amherst Planning Board. 3-10-92

B. Conditions of Approval

The Board of Adjustment may attach such conditions to its approval as are reasonable, necessary and appropriate. All special exceptions users are hereby declared to have special characteristics that shall be considered on a case- by-case basis. To ensure compliance with the spirit of the Zoning Ordinance, such conditions shall not conflict with the review and approval of the Planning Board. 3-10-92

C. Limits on a Special Exception

Substantial construction, or occupancy if no construction is involved, must commence within one (1) year of the Board of Adjustment approval of the special exception. If construction or occupancy is not commenced within this period, the special exception approval is declared null and void. 3-10-92

Section 5-3 Permits for Special Exceptions

A permit for a special exception use shall not be issued by the Board of Selectmen or their duly appointed representative, the Administrative Official, until so directed by the Board of Adjustment who shall first be satisfied that all of the standards and conditions of this article and the Ordinance have been met. 3-12-63

Section 5-4 Uses permitted by Special Exception Residential/Rural

3-11-93

1. Religious purposes 3-12-63
2. Nursing Homes 3-12-63
3. Elderly Housing: Single or Multi unit residential developments which comply with the Federal Definition of Elderly Housing subject to the following: (3-14-89) (3-12-91) (3-11-03)
 - a. Each structure may be a single dwelling unit or a cluster of units containing from two (2) to twelve (12) dwelling units. 3-14-76 (3-11-03)
 - b. Tract density shall be a minimum of one-half acre for each dwelling unit, and the entire tract of land on which a development is situated shall contain not less than fifteen (15) acres. 3-4-75

- c. If off-site drinking water is available and on-site soils are classified by the NHDES as Group I or II then the tract density in units shall be limited to a maximum of six (6) bedrooms per acre and the minimum tract size shall be reduced to seven and one-half (7.5) acres. (3-13-01) (3-11-03)
 - d. Ancillary facilities such as community meeting rooms, site management offices, and rooms for limited healthcare services are allowed. (3-13-01) (3-11-03)
 - e. No structure shall be constructed to a height greater than thirty-five (35) feet, exclusive of chimneys or cupolas, measured from the lowest adjacent exterior elevation. (3-4-75) 3-11-86 (3-11-03)
4. Accessory Apartment- A second dwelling unit incorporated within a existing or proposed single family home which is structurally integrated with direct access between it and the main living unit. The total area of the accessory apartment shall not exceed 800 square feet and shall consist of only one bedroom. Any changes to the total number of bedrooms per lot will require a new state approved septic plan to be placed on file with the Zoning Office prior to the issuance of a conversion/building permit. 3-9-82 (3-10-98) 3-11-03

Section 5-5 _____

Section 5-6 Uses permitted by Special Exception Commercial Zone

- 1. Outside recreation establishments exclusive of outdoor theaters. 3-2-76
- 2. Outside storage of equipment and materials, but not including junk yards. 3-2-76
- 3. Religious Uses 3-2-76
- 4. Private Schools 3-2-76
- 5. Hospitals, nursing homes and other similar uses 3-2-76
- 6. Accessory Apartment- A second dwelling unit incorporated within a existing or proposed single family home which is structurally integrated with direct access between it and the main living unit. The total area of the accessory apartment shall not exceed 800 square feet and shall consist of only one bedroom. Any changes to the total number of bedrooms per lot will require a new state approved septic plan to be placed on file with the Zoning Office prior to the issuance of a conversion/building permit. 3-9-82 (3-10-98) (3-11-03)
- 7. Kennels 11-2-82

Section 5-7 Uses Permitted by Special Exception Northern Rural Zone

- 1. Religious purposes 3-2-76
- 2. Private schools 3-2-76

3. Hospitals, clinics, nursing homes, and other similar uses 3-2-76
4. Professional Offices 3-2-76
5. Funeral Homes 3-2-76
6. Sawmills (3-2-76) 3-9-82
7. Accessory Apartment- A second dwelling unit incorporated within a existing or proposed single family home which is structurally integrated with direct access between it and the main living unit. The total area of the accessory apartment shall not exceed 800 square feet and shall consist of only one bedroom. Any changes to the total number of bedrooms per lot will require a new state approved septic plan to be placed on file with the Zoning Office prior to the issuance of a conversion/building permit. 3-9-82 (3-10-98) (3-11-03)
8. Kennels 11-2-82

Section 5-8 Uses Permitted by Special Exception Industrial Zone

1. Kennels. 11-2-82
2. Sexual Oriented Businesses (3-14-00)

I. Purpose and Intent

It is the purpose of this article to establish reasonable and uniform regulations to prevent the concentration of sexually oriented businesses within the Town of Amherst and, it is the intent to promote the health, safety, and general welfare of the Citizens of the Town of Amherst and, it is the intent of this article that the regulations be utilized to prevent problems of blight and deterioration which accompany and are brought about by the concentration of sexually orientated businesses; and, the provisions of this Article have neither the purpose nor the effect of imposing limitation or restriction on the content of any communicative materials, including sexually oriented materials; and, it is not the intent nor effect of this Article to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market; and, neither is it the intent nor effect of this Article to condone or legitimize the distribution of obscene material. The nature of the proposed use shall not be sufficient grounds to support a finding that the use does not meet the criteria set forth in Section 5-2.

II. Definitions of Sexually Oriented Businesses

A sexually orientated business is any place of business at which any of the following activities is conducted:

A. Adult Bookstore or Adult Video Store — a commercial establishment that devotes more than 15% of the total display, shelf, rack, wall, table, stand or floor area, utilized for the display and sale of the following; The establishment, as one of its principal business purposes, offers for sale or rental any form of consideration, any one or more of the following:

1. Books, magazines, periodicals, or other printed matter, or photographs, films, motion pictures, video cassettes, video reproductions, slides, tapes, records, CD-ROMs or other forms of visual or audio representations which depict or describe “specified sexual activities” or “specified anatomical areas” or meet the definition of “harmful to minors” and/or “sexual conduct” as set forth in RSA 571-B:1; or,
2. Instruments, devices or paraphernalia which are designed for use in connection with “sexual conduct” as defined in RSA 571-6:1, other than birth control devices. A commercial establishment may have other principal business purposes that do not involve the offerings for sale or rental of material depicting or describing “specified sexual conduct or activities” and still be categorized as “Adult Video/Book Store.” Such other business purposes will not serve to exempt such commercial establishments from being categorized as an “Adult Video/Book Store” so long as one of its principal business purposes is offering for sale or rental for consideration to specified material which depict or describe “specified sexual conduct or activities” or specified anatomical areas.”

a) Specified sexual conduct or activities — means the male genitals in a state of sexual arousal and/or vulva or more intimate parts of the female genitals.

b) Specified anatomical areas — means and includes any of the following:

- 1) The fondling or other erotic touching of the human genitals, pubic region, buttocks, anus, or female breasts;
- 2) Sex acts, normal or perverted, actual or simulated, including intercourse, or copulation, or sodomy;
- 3) Masturbation, actual or simulated; or
- 4) Excretory function as part of or in connection with any of the activities set forth in (1) through (3) above.

AN ADULT BOOKSTORE OR ADULT VIDEO STORE DOES NOT INCLUDE AN ESTABLISHMENT THAT SELLS BOOKS OR PERIODICALS AS AN INCIDENTAL OR ACCESSORY PART OF ITS PRINCIPAL STOCK AND TRADE AND DOES NOT DEVOTE MORE THAN 15% OF THE TOTAL DISPLAY AREA OF THE ESTABLISHMENT TO THE SALE OF BOOKS AND PERIODICALS.

B. Adult Motion Picture Theatre — An establishment with a capacity of five or more persons, where for any form of consideration, films, motion pictures, video cassettes, slides or similar photographic reproductions are shown, and in which a substantial

portion of the total presentation time is devoted to the showing of material which meets the definition of “harmful to minors” and/or “sexual conduct” as set forth in RSA 571-B: 1, for observation by patrons. For subsections C, D, E, F, G, a “substantial portion of the total presentation time shall mean the presentation of films or shows described above for viewing on more than seven (7) days within any 56 consecutive day period.

C. Adult Motion Picture Arcade — Any place to which the Public is permitted or invited wherein coin or slug-operated or electronically, electrically or mechanically controlled still or motion picture machines, projectors, or other image-producing devices are maintained to show images to five (5) or fewer persons per machine at any one time, in which a substantial portion of the total presentation time of the images so displayed is devoted to the showing of material which meets the definition of “harmful to minors” and/or “sexual conduct,” as set forth in RSA 571-6:1.

D. Adult Drive-In Theatre — An open lot or part thereof, with appurtenant facilities, devoted primarily to the presentation of motion pictures, films, theatrical productions and other forms of visual productions, for any form of consideration to persons in motor vehicles or on outdoor seats, in which a substantial portion of the total presentation time being presented for observation by patrons is devoted to the showing of material which meets the definition of “harmful to minors” and/or “sexual conduct” as set forth in RSA 571-B:1.

E. Adult Cabaret — A nightclub, bar, restaurant, or similar establishment which during a substantial portion of the total presentation time features live performances which meet the definition of “harmful to minors” and/or “sexual conduct” as set forth in RSA 571-B: 1, and /or feature films, motion pictures, video cassettes, slides or other photographic reproductions, a substantial portion of the total presentation time of which is devoted to showing of material which meets the definition of “harmful to minors” and/or “sexual conduct” as set forth in RSA 571-B:1.

F. Adult Motel — A motel or similar establishment offering public accommodations of any form of consideration which provides patrons with closed circuit television transmissions, films, motion pictures, video cassettes, slides or other photographic reproductions, a substantial portion of the total presentation time of which are distinguished or characterized by an emphasis upon the depiction or description of materials which meet the definition of “harmful to minors” and/or “sexual conduct” as set forth in RSA 571-B:1.

G. Adult Theatre — A theatre, concert hall, auditorium or similar establishment either indoor or outdoor in nature, which for any form of consideration, regularly features live performances, a substantial portion of the total presentation time of which are distinguished or characterized by an emphasis on activities which meet the definition of “harmful to minors” and/or “sexual conduct” as set forth in RSA 571-B: 1.

H. Nude Model Studio — A place where a person who appears in a state of nudity or displays male genitals in a state of sexual arousal and/or the vulva or more intimate parts

of the female genitals and is observed sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons who pay money or any form of consideration or such display is characterized by an emphasis on activities which meets the definition of “harmful to minors” and/or “sexual conduct,” as set forth in RSA 571 -B:1.

I. Sexual Encounter Center — A business or commercial enterprise that as one of its primary business purposes, offers for any form of consideration:

(a) physical contact in the form of wrestling or tumbling between persons of the opposite sex; or

(b) activities between male and female persons and/or persons of the same sex when one or more persons is in the state of nudity; or where the activities in (a) or (b) is characterized by an emphasis on activities which meets the definition of “harmful to minors” and/or “sexual conduct,” as set forth in RSA 571-B:1.

III. Allowed Locations and Location Restrictions of Sexually Oriented Businesses

Sexually oriented businesses, as defined above, shall be permitted only in the Industrial Zone, by Special Exception, provided that all other regulations, requirements, and restrictions for the zone in which the sexually oriented Business is to be located are met; and no sexually oriented business shall be permitted within 1,000 feet of another existing sexually oriented business or one for which a building permit has been applied for; and,

No sexually oriented business shall be permitted within 750 feet of any other zoning boundary.

No sexually oriented business shall be permitted within 750 feet of any church, place of worship, parish house, convent, public, parochial, or private school, kindergarten, State approved day care center or public sports/recreation parks; and no sexually oriented business shall be permitted within 750 feet of the Town boundaries; and,

No sexually oriented business shall be permitted within 1,000 feet of another existing sexually oriented business on the date of the passage of this article and, no sexually oriented business shall be permitted within a building, premise, structure or other facility that contains a sexually oriented business as defined in paragraphs A through I above.

The Zoning Board of Adjustment shall grant the Special Exception provided the applicant demonstrates facts sufficient to support a finding that the conditions for the granting of a Special Exception in section 5-2A have been met.

IV. Measure of Distance

The distance between any two sexually oriented businesses shall be measured in a straight line, without regard to intervening structures, from the closest exterior structural wall or temporary or permanent physical divider between each of the businesses.

V. Additional Reasonable Regulations

The Planning Board is empowered hereunder to review and approve permit applications for sexually oriented businesses and impose reasonable restrictions for buffering, outdoor parking lighting, adequate ingress and egress from the site off of and onto public roads, pedestrian movement, and to provide for appropriate landscaping and building aesthetic in the “Non-Residential Site Plan Review Regulations of the Town of Amherst, New Hampshire,” and to avoid site development layout which may result in negative environmental impacts.

VI. Severability

The invalidity of any section or provision of this Article shall not invalidate any other section or provision thereof.

Section 5-9 Uses Permitted by Special Exception Limited Commercial Zone

1. Accessory Apartment- A second dwelling unit incorporated within a existing or proposed single family home which is structurally integrated with direct access between it and the main living unit. The total area of the accessory apartment shall not exceed 800 square feet and shall consist of only one bedroom. Any changes to the total number of bedrooms per lot will require a new state approved septic plan to be placed on file with the Zoning Office prior to the issuance of a conversion/building permit. 3-9-82 (3-10-98) (3-11-03)

2. Religious purposes 3-8-88

3. Kennels (3-13-01)

Section 5-10 Uses Permitted by Special Exception Northern Transitional Zone

1. Religious purposes 3-14-89

2. Private Schools 3-14-89

3. Hospitals, Clinics, nursing homes, and other similar uses 3-14-89

4. Professional Offices 3-14-89

5. Funeral Homes 3-14-89

6. Sawmills 3-14-89

7. Accessory Apartment- A second dwelling unit incorporated within a existing or proposed single family home which is structurally integrated with direct access between it and the main living unit. The total area of the accessory apartment shall not exceed 800 square feet and shall consist of only one bedroom. Any changes to the total number of bedrooms per lot will require a new state approved septic plan to be placed on file with the Zoning Office prior to the issuance of a conversion/building permit. 3-9-82 (3-10-98) (3-11-03)

8. Kennels 3-14-89

NOTE:

Uses Permitted by Special Exception in the Flood Plain Conservation District was eliminated 11-2-82. See Section 4-10

Uses Permitted by Special Exception in the Wetland Conservation District was eliminated 3-12-85 See Section 4-11

Uses permitted by Special Exception in the Watershed Protection District was eliminated 3-12-85 See Section 4-12